THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.11929 OF 2006

1st August 2006

Between:
Gunish R. Pal, S/o late Shri Guru Dayal Pal.

.. Petitioner.

And

The Union of India,
Through the Secretary,
Ministry of Law Justice &
Company Affairs,
New Delhi – 110 011
And two others.

.. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.11929 OF 2006

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioner herein, who is a Lecturer (Selection Grade), Department of Mechanical Engineering, Faculty of EME, HQ Military College of EME, Trimulgherry, Secunderabad, filed this Writ Petition against the Union of India, the Government of A.P., and the Registrar General of this Court seeking a Writ of Mandamus declaring, *inter alia,* the practice of the State and its instrumentalities thereof invoking the writ jurisdiction of this Court by way of Writ Petitions under Articles 226 and 227 of the Constitution of India for the purpose of assailing the judgments and orders judicially rendered by the Central and the State Administrative Tribunals in exercise of their judicial powers of adjudication of service disputes conferred upon them under the Administrative Tribunals Act, 1985 ('the Act' for brevity) and the admission or adjudication of such Writ Petitions instituted by the State and its instrumentalities thereof by this Court, as ultra vires.

The case of the petitioner, in brief, is that he had filed an application in O.A.No.337 of 1999 under Section 19 of the Act before

the Central Administrative Tribunal at Hyderabad A.P., and ultimately, the same was allowed in his favour as per the order dated 06.02.2001 and against which, the Union of India i.e., the first respondent herein filed a Writ Petition in W.P.No.15279 of 2001 and obtained interim stay of operation of the aforesaid order. As against such order, the State or its Instrumentalities cannot invoke the writ jurisdiction of this Court for overcoming and reversing the judicial determination of a judicial body like the Administrative Tribunals as constituted under the aforesaid legislation. Therefore, with his experience on the legal side and on consultation, he feels that such a practice by the State or its Instrumentalities is very much questionable and requires judicial determination. The writs as contemplated i.e., Mandamus, Prohibition, Quo-warranto, Certiorari etc., cannot be entertained at the instance of the State and once the *lis* on contest by such State or its Instrumentalities has been decided by such bodies, they become final and there is no further remedy as such either on appeal or otherwise in the format of a writ under Article 226 of the Constitution of India. Further, it is stated that any such remedy by way of a writ is vested only in favour of those who are aggrieved against any violation of their rights as conferred under Part-III of the Constitution of India. Even otherwise, this Court cannot extend its powers of supervision under Article 227 of the Constitution of India over such Tribunals, which are

not subordinates. That apart, it was contended that the principles as laid down in **L. CHANDRA KUKMAR vs. UNION OF INDIA**[1] reiterate the original powers under writ jurisdiction of the High Courts under Articles 226 and 227 of the Constitution of India. However, it does not permit this Court to exercise any appellate jurisdiction over a judicial determination by an Administrative Tribunal especially where no such remedy is provided for under the provisions of the Act. Therefore, by these and other reasons, invocation of the writ remedy by the State is wholly incompetent and unsustainable. Hence, this Writ Petition.

Heard Sri Captain M. Saxena, the learned counsel appearing on behalf of the petitioner, Sri A. Rajasekhar Reddy, the learned Assistant Solicitor General appearing on behalf of the first respondent, the learned Government Pleader for Services-II appearing on behalf of the second respondent and Smt. M. Bhaskara Laxmi, the learned Standing Counsel appearing on behalf of the third respondent.

Having heard the counsel on either side, and on perusal of the material available on record, the main point which arises for consideration is as to whether, on the facts and circumstances, the State or its Instrumentalities thereof is entitled to invoke the powers under Articles 226 and 227 of the Constitution of India as against any

orders or judgments passed on contest either by the Central or State Administrative Tribunals under the provisions of the Act ?

There is no serious dispute in regard to the factual matrix and as such there is no need to go into any such aspects except to the extent of mentioning the fact that the petitioner was a successful applicant before the Central Administrative Tribunal in O.A.No.337 of 1999. Having filed an application under Section 19 of the Act which was allowed as per the order dated 06.02.2001 and against which the first respondent i.e., the Union of India filed a Writ Petition in W.P.No.15279 of 2001 under Article 226 of the Constitution of India and obtained interim stay of the said order, which according to the petitioner is still pending on the file of this Court. Therefore, the grievance of the petitioner is that on an overall look at the provisions of the Act, the State could not approach this Court by way of a Writ Petition under Article 226 of the Constitution of India and thereby converting such remedy as if by way of an appeal is not permissible. The whole crux of the submission is to the effect that the State or its Instrumentalities are parties before the Tribunal and it is only after contest on merits, the Tribunal, which is also a judicial body, goes into the *lis* and ultimately, come to a conclusion determining the main controversy and the rest is finding on the facts and circumstances.

Therefore, unless and until a regular remedy of appeal is provided for to this Court under the said Statute, which is a special one, the State or its Instrumentalities cannot convert the powers of judicial review under Articles 226 and 227 of the Constitution of India as an appellate body. However, there is no dispute in regard to the statutory format laid in the very constitution of the Administrative Tribunals and the provisions thereof vis-à-vis Article 323A of the Constitution of India and it has been already held that it is only such Tribunal, which shall have the jurisdiction hitherto belong to all Courts and the Civil Courts or High Courts shall no longer have any jurisdiction over service matters which come under the relevant provisions of the Act. Therefore, having regard to the principles laid down in **UNION OF INDIA vs. DEEP CHENDPANDY**[2] the decision rendered earlier, the question of invoking any original relief at the inception by invoking the jurisdiction under Articles 226 and 227 of the Constitution of India does not arise having regard to the powers as conferred under the provisions of the State Act. Though several contentions sought to be urged from various angles on behalf of the petitioner as to the very entertainment of such writs as against the orders of the Tribunals, both Central and State, referring to various principles, the fact remains that the very question is no longer *res integra.* Considering the provisions of the

State Act and the scope there under, it was held that the jurisdiction conferred upon the High Courts under Articles 226 and 227 of the Constitution of India and upon the Supreme Court under Article 32 of the Constitution of India is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226 and 227 and 32 of the Constitution and the Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny by a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for the litigants to directly approach the High Courts even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. While holding so, it is to be noticed specifically that clause 2 (d) of Article 323A and Clause 3 (d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226 and 227 and 32 of the Constitution

of India, are held to be unconstitutional. In the aforesaid decision, after going into several such questions and aspects, the Apex Court held that it is only the original jurisdiction which the High Courts lack under Articles 226 and 227 of the Constitution of India but once the decision is given by the Tribunal, the same can always be scrutinized in exercise of such writ jurisdiction. Having regard to such well-laid principles and formulas by the Apex Court, it is not open to the petitioner to reagitate the very same questions once again before this Court in raising any such objections as to the very maintainability of the writ petition at the instance of the State or its Instrumentalities. Even in this case, admittedly, the petitioner approached the Tribunal by way of an application under Section 19 of the Act and the order went in his favour. It is only when the first respondent sought to assail the same by way of a writ petition, this Writ Petition is filed challenging the competence of entertainment of the writs at the instance of the State or Instrumentalities thereof. Having regard to the same and especially in view of the binding nature of the principles laid down by the Apex Court under Article 141 of the Constitution of India, we have no other go but to hold that the submissions made by the petitioner in this regard are wholly misconceived and unsustained. Hence, we do not find any merits in this Writ Petition.

The Writ Petition is, accordingly, dismissed. However, in the circumstances of the case, no costs.

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B. PRAKASH RAO, J

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RAMESH RANGANATHAN, J

1st August 2006.

Chvn.

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[1] AIR 1997 SC 1125

[2] AIR 1993 SCC 382